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*State-building, Informal Governance and Organized Crime: the case of Somali Piracy*

*Abstract:*

The paper argues that gangs, clans, mafias and insurgencies are, like states, forms of governance. We apply this insight to the case of Somali piracy and explore whether protectors of piracy were clearly distinct from pirates; and to what extent protectors coordinated their activities across the Somali coastland. We show that clan elders and Islamist militias facilitated piracy by protecting hijacked ships in their anchorages and resolving conflicts within and between pirate groups. Protection arrangements operated *across* clans, as shown by the free movement of hijacked ships along the coastline and the absence of re-hijacking after ransoms were paid. Piracy protection can be thought of as part of a continuum of protection arrangements that goes from Mafias to legitimate states. We conclude by highlighting the implications of our findings for the debate on state-building and organized crime.

**Keywords: Organized Crime; State-building; Governance; Piracy; Somalia**

## ***Governance and Piracy***

Scholars recognize that there is a relationship between organized crime and the state-building (e.g., Tilly 1985; Thomson 1996; Keen 1998; Heyman 1999; Andreas 2004 and 2013). The standard account of such a relationship is that “organized crime and corruption undermine the internal security, political institutions and economy of [weak] states” (Schroeder and Friesendorf 2009: 138). Organized crime is seen as a major obstacle to the peace process in post conflict settings, such as Bosnia, Kosovo and Somalia, and fighting against it as a precondition for state-building (Schroeder and Friesendorf 2009; Strazzari 2008). Yet the relation between organized and state building is more complex. As noted by Andreas (2004 and 2013), smugglers may contribute to a country’s economic survival, while foreign interventions may foster criminalization rather than solving a conflict. More broadly, small scale illicit acts may well be the ‘weapons of the weak,’ as famously argued by Scott (1985). Instead of drawing a firm dichotomy between the ‘legal’ and the ‘illegal’ and endorsing a blanket condemnation of ‘organized crime’, one needs a “deeper and more complex understanding of [the criminalized aspects of conflict]” (Andreas 2004: 49; see also Pugh, Cooper and Goodhand 2004: 8).

Such an understanding should start from drawing analytically sound distinctions. Normally, ‘organized crime’ is a catch-all notion applied to any group that is organized on a continuing basis to break the law (Maltz 1976; Finckenauer 2005). This approach fails to capture the high degree of specialization and division of labour within the underworld. In illegal markets, some individuals specialize in the *production* of goods and services, such as growing poppies, coca or marijuana. Others devote themselves to *trading* illegal commodities, such as drugs traffickers, human smugglers and cybercriminals who trade stolen information on internet fora. A third type of organized crime groups is analytically akin to the state, providing governance. A weak or failed state might have within its territory effective providers of protection in the shape of Mafias, gangs, insurgents, private armies, and clans – some with a relatively high degree of legitimacy. Alternatively, a weak state might harbour producers and traders of illegal goods, who are in turn protected by corrupt officials or evade state

control altogether. A blank declaration that organized crime undermines state-building fails to pinpoint the specific relations between key actors, and it is a poor guide to what to do in order to strengthen the rule of law and alleviate the suffering of ordinary people.

A key proposition of the perspective we advocate here is that informal institutions of governance differ from those who produce and trade illegal goods, and have varying degrees of legitimacy. Below we show that the distinction between criminal actors and their protectors applies to the case of Somali piracy, where the *protectors* of piracy also provide informal local governance. We also find conclusive evidence of coordination across clans indicating that informal governance spans the entire coastline. Since piracy does not function without support from local clans who in turn are crucial to the functioning of Somalia's economy and society, we suggest that engaging with the protectors is more fruitful than sea-based counter-piracy and land-based approaches focusing on alternative livelihoods for pirates. Our findings have broader implications for the debate on state-building and organized crime.

### ***1. Governance: Organized Crime, the Mafia and the State***

By 'governance' we refer to the set of rules and norms that regulate exchange (Dixit 2004). Ordering of exchange may emerge spontaneously, through repeated interaction, or be supplied by an institution. There is also a dark side to governance. Property rights can be protected for some at the expense of others, resources can be mobilized in order to secure benefits for a select few, even at the expense of overall long-term economic efficiency. Thus, the study of governance also includes less-than-ideal arrangements (Skarbek 2014; Skaperdas 2001; Leeson 2009). Mafia groups are one form of territorial extra-legal governance. Since the 1990s, a series of ethnographies have shown that the Sicilian Cosa Nostra, the Hong Kong Triads, the Russian Mafia and the Japanese Yakuza are essentially forms of governance specializing in the supply of protection. A clear distinction between ordinary criminals

paying a fee to operate, and protectors, is observed (for a review, see Varese 2014). Mafias are formed by individual crime *families* that normally control a territory. Over time, the families have developed mechanisms of communication, coordination, and dispute settlement, as in the case of Italian-American Mafia's *Commissione*— a forum where key inter-families decisions are discussed and enforced (Varese 2014).

Contrary to the view that Mafias are parasitic extortionists, the services offered by these institutions are ultimately genuine. For instance, Mafias are able to supply real services like protection against extortion; protection against theft and police harassment; protection in relation to informally obtained credit and the retrieval of loans; and the settlement of a variety of social disputes. The Mafia offers protection to entrepreneurs in illegal markets, such as thieves, prostitutes, loan sharks, and drug dealers. This includes protection against law enforcement. Another form of market protection is the enforcement of cartel agreements. Mafia protection produces negative externalities: if people use Mafia services in a given market, those who are unprotected become the target of additional crime and harassment, thereby creating a strong incentive for them to also enlist the help of mobsters. If protection is offered to some at the expenses of others, this is equivalent to a barrier to entry into a given market. Non-payers become the target for what is often described as extortion, but it actually is the flip-side of protection for those who pay against market entry by competitors (for a review, see Varese 2014).

Mafia groups and States share a crucial aspiration: that of governing territories. This implies that Mafias and States are part of the same continuum. The key dimension that differentiates institutions on this continuum is the mechanisms that constrain the protectors. While in democratic states people can choose their rulers and courts operate independently, those who live in a territory controlled by a Mafia have no right to vote or appeal to codified rules against the protector. Other cases fall in between these two extremes. For instance, the Frente Farabundo Martí of El Salvador, the Liberation Tigers of Tamil Eelam of Sri Lanka, the Revolutionary Armed Forces of Colombia, and the Revolutionary

United Front of Sierra Leone all offer a degree of protection to the areas they control and all conduct trials in rudimentary courts they convene, where a limited degree of due process is guaranteed (Varese 2010: 20; Sivakumaran 2009). They are not just Mafias yet they are not quite states.

This paper aims to explore the extent to which informal local governance in Somalia can be placed along the continuum that goes from Mafias (providing protection to lawbreakers) to legitimate states (providing largely consensual governance within their respective territories). We do this through an in depth analysis of the *nature* and the *extent* of the arrangements that provide security to the pirate business in Somalia. We ask two specific questions.

- 1) Does a clear distinction between “producers” of crime (piracy) and specialists in protection exist?

The vast majority of scholars have conflated the two roles in the case of Somali piracy. The exception is Shortland and Varese (2014), yet this study assumes the distinction, rather than offering empirical support for it, while exploring why certain parts of the Somali coastland do not experience piracy. If the answer to this question is positive, we should expect that the pirates pay a fee to the “protectors”, and that pirates’ target choices are informed by the interests of their “protectors”. If pirates buy security from existing structures of governance, they are no different from those criminals who pay protection money to a Mafia in order to ensure a degree of protection from competitors, other criminals and from domestic and international police forces (Varese 2014). It follows that the international community would be best advised to invest resources in the existing forms of local governance and devise incentives that would make such stakeholders *switch* from the protection of piracy to the protection of legitimate economic activities.

If the answer to this question is negative and the pirates were providing governance, then we should observe gang wars between pirate groups in order to reach supremacy in a given territory, as one would expect of other state-like structures. If pirates themselves ensure a degree of stability on land in order

to further their criminal aims, they would unintentionally provide a degree of local governance. References to “pirate-controlled regions” and “pirate territory” are indeed made by several commentators (e.g. Kirk 2012; Nelson and Fitch 2012; New York Times 25/I/2012). In this case, pirates would be akin to the “stationary bandits” famously analysed by Mancur Olson (1993: 568). In this scenario, international organizations interested in state building in Somalia would be best advised to engage with pirates directly, as their organizations would be the basis of a future state, rather than a scourge to be eliminated.

Below we show that the distinction between producers of crime and protectors holds. In Somalia there is a fundamental difference between piracy on the one hand, and the protection of piracy on the other. Pirates are organised in groups and have internal agreements e.g. about the division of ransom monies (NPR 15/IV/2011; Leeson 2009). However, Somali pirate groups control neither territory nor access to shipping lanes. Essentially, they are “gangs of thieves”, which rely on the services of local protectors for safe anchorage, safe passage and access to supply lines, to enforce internal agreements and to settle disputes. Furthermore, we argue that those who protect piracy in Somalia provide important local governance functions in a country where the central government does not project power in the regions.

Yet a second question remains:

2) Do co-ordination mechanisms among protectors of piracy exist?

If so, we would expect pirates to launch attacks away from their home base, the free movements of hijacked ships along the Somali coast and no re-hijacking of released ships. In other words, before, during and after the hijack, pirates and hijacked ships are accorded free passage in areas of Somalia where a given pirate group *does not* operate. The absence of re-hijacking would suggest that long-range security arrangements must be at work across large sections of the Somali coastland. In the paper we find that well-functioning coordination mechanisms exist among protectors, ensuring a high degree of stability and security in the business.

These conclusions have important theoretical and policy implications. Theoretically, our findings suggest that the security arrangements in the Somali piracy business can be interpreted through a unified governance framework, which has successfully been applied to the study of Mafias. Policy-wise, it follows that the international community should engage with land-based providers of governance and explicitly include them in state-building efforts. By contrast, naval interventions fail to address the underlying problem and would have to be made permanent to prevent the resurgence of piracy (Do 2013).

The paper continues as follows. Section 2 describes the essential features of Somali piracy, while Sections 3 and 4 outline protection arrangements in Somalia and offer evidence for the conclusions we reach. Section 5 draws the theoretical and policy conclusions.

## ***2. Piracy as a criminal market***

Maritime extortion has a long history in Somalia (Dua 2013). The rulers of local polities on the coast have charged the regional shipping traffic in Somali waters and for accessing Somali ports for hundreds of years (Anderson 2009). Under the Siad Barre regime (1969-1991), the system of taxing trade and licensing fishing was formalised, with the intention of developing the coastal economy. Foreign trawlers bought licenses to fish in Somalia's tuna-rich territorial waters and bought fish from local fisheries (Dua and Menkhaus 2012). After the breakdown of the Siad Barre regime in 1991, private providers of protection (often acting as self-appointed "coast-guards") issued licenses for fishing and extorted on-the-spot fines from anyone caught without adequate protection (Dua 2013, Ould-Abdallah 2008, United Nations 2003; Somaliland Press 25/VI/2013). Hijack-for-ransom piracy developed from these roots: when foreign fishing vessels returned fire, militias moved on to unarmed and more lucrative foreign merchant vessels in the international shipping lanes (Dua and Menkhaus 2012).

There is no monopoly on opportunistic maritime crime: many people have the skills and the courage to get on board a ship. If the crew of the target ship is not vigilant, this does not even require a



particularly fast boat and a few knives are often sufficient to subdue an unarmed crew (IMB 2011: 59). Indeed, Somali pirates range from off-duty fishermen with near-antique weapons and wooden boats, to well-equipped multi-skiff crews with GPS and satellite phones, powerful motors on modern fibreglass hulls and high-powered weapons (IMB 2011: 62; Do 2013; Shortland and Vothknecht 2012). However, extracting a significant profit from boarding a ship requires a secure land-base. At sea, ships can be looted of valuables, such as tools, crew possessions and petty cash. Without access to a land-side infrastructure, pirates cannot unload cargo or give a ship a new identity, so at best they are restricted to kidnapping crew members and stealing goods which can be transferred to their own (small) boats and for which there is a local market (de Groot *et al* 2011).

Hijack-for-ransom allows pirates to extract an additional premium for the crew, cargo and ship from the owner. However, it also requires a great deal more organisation and infrastructure than on-the-spot extortion. Establishing a “fair price” through bargaining under conditions of asymmetric information often takes several months, sometimes in excess of a year. De Groot *et al* (2012) show that the highest ransoms were paid between 4-8 months.

Pirates therefore needed to keep the ships under their control for significant periods of time. In international waters, pirates feared attack by the international naval forces. Within the territorial waters of Somalia, an anchored or slowly moving hijacked ship is an attractive prey for opportunistic criminals, who could save themselves a dangerous journey into the Indian Ocean if they took over a rival’s prey. The ship might also attract the attention of local militias or the security forces of regional governments. Moreover, ship-owners made the welfare of the crew and integrity of ship and cargo a primary condition of bargaining (Interviews I-1 and I-2). Once the ships’ supplies ran out the crew needed food and running the ships’ engines (for light and desalination) required diesel. Many pirates were addicted to the drug-leaf *khat* which deteriorates quickly with age and had to be supplied regularly.

Below we examine whether a clear distinction between protectors and ‘producers’ is evident in Somali piracy, including evidence on pirate payments to local elites and target selection (question 1). Secondly, we provide new evidence on the geography of piracy which shows that pirates’ security guarantees transcended clan territories and required cross-clan cooperation (question 2). Our data include the IMB’s Annual Piracy Reports 2008-2014, data collected and field interviews conducted for Do (2013),<sup>1</sup> Somali press reports and secondary literature. The IMB data are the main source of data in the piracy literature (see discussion in Coggins 2012) and the list of successful hijacks is comprehensive.<sup>2</sup> In addition, we created a number of maps using the Bloomberg vessel tracking database. The maps show the movement of registered merchant vessels based on signals regularly emitted by the (mandatory) inbuilt Automated Information System (AIS). As this equipment is very difficult to disable (and most pirates did not attempt to do so), we can often trace the ships’ movements throughout the hijack.

### ***3. Does a distinction between pirates and protectors of piracy exist?***

Three sets of informal protectors with established rules and mechanisms to settle disputes have replaced formal governance in Somalia since the regime collapse of 1991 (Le Sage 2005). Clans and their sub-divisions are the foundations of social and political organisation in Somalia (Lewis 2008; Laitin and Samatar 1987). Customary law (*Xeer*) was developed to settle disputes between clans over access to land and water and avoid the escalation of conflicts through the payment of “blood money” (*diya*). Clan elders apply *Xeer* and resolve (intra and inter-clan) disputes through mediation and arbitration and can mobilise militias to enforce such settlements. Secondly, religious leaders use *Sharia* law to settle disputes and punish offenders. *Sharia* is largely incorporated into customary law, but Islamic courts and their armed militias sometimes become the main providers of governance, especially in areas where no single clan is dominant. Thirdly, there are warlords, who built up personal militias to protect highly profitable business interests (UN 2010, Hansen *et al* 2012). By enforcing the decisions of the religious and clan leadership a warlord can gain legitimacy in the eyes of the

population and become the primary provider of security and governance within a territory.<sup>3</sup> Warlords, clans and Islamist groups collect fees or taxes from local businesses and at road-blocks (“check-points”) from passing traders to fund their militias.<sup>4</sup> These fees are variously called “tributes” or “tithes” in historical accounts (Anderson 2009). They are effectively protection payments.

Because the reach of the official state is very limited, businesses rely on extra-legal governance (Menkhaus 1998: 222). Protection payments ensure that goods and inputs reach the business and can be securely stored, and that customers and staff can transact in safety. For instance, the country’s main market--the Bakara market in Mogadishu--saw little violence and was only rarely contested between rival clan militias - confirming the existence of highly effective providers of protection. Protection arrangements usually result in monopolistic or oligopolistic market structures (Lane 1958; Nozick 1974; Dixit 2004). Those who buy “protection” from the local provider of private security can in turn charge high prices in local markets. Indeed, in Somalia staple foodstuffs are regularly 50-100% more expensive than international commodity prices even in the main import centres Mogadishu and Bosasso (FSNAU 2012). Similarly, the tiny number of trucking businesses employed by the World Food Programme and the high fees that they were able to charge suggests that their security arrangements included the elimination of rival businesses.<sup>5</sup>

Any piracy business establishing itself within Somalia would therefore find an existing provider of local governance, who offers “protection” to traders and other businesses, and may or may not offer protection to pirates (Shortland and Varese 2014). Figure 1 shows the main pirate havens in Somalia, which are concentrated on the Puntland and Central Somali Coast.

Figure 1: Map of Somalia with pirate anchorages

Historians point to a long history of “predation and tributes” on the Puntland coast, going back at least to the 1600s, with local rulers taking a tribute from maritime criminals, such as groups ransoming shipwrecked sailors and smugglers (Anderson 2009; Colley 2002). In some areas, therefore, protecting

maritime criminals was an accepted part of the local political economy. If the distinction between protectors and pirates holds, we should find evidence of payments by Somali pirates. Such evidence exists and the amounts involved are large. Pirates are charged an “anchorage fee” - just like any other trader. The fee is generally reported to be in the region of US\$100,000-300,000 - payable at the moment of entry rather than at the conclusion of the ransom negotiation (Interviews I-3 and I-4). This fee is generally funded by the investors who also supply the capital for the attack crews. This way the provider of security is guaranteed an income regardless of the outcome of the negotiation.<sup>6</sup>

The next profit opportunity arises when members of the local militia are hired to guard hijacked ships. Reports of up to 50 people on the ship with a further 50 employed as guards on the beach seem excessive, but could well be a sign of the clan creating employment for local young men.<sup>7</sup> One interviewee said that clan militia members were hired out for US\$400 a month (Interview I-1), other sources say as high as US\$10,000 for the duration of the hijacking - both unusually high figures in a country with an average annual wage below \$1000 a year. However, the final take-home pay of the gunmen reflected the true cost of hiring unskilled labour. Do (2013:116) estimates average costs of just \$430 per guard for a representative pirate operation of 6 months duration. This indicates that the militia leaders took a significant cut, in line with what Levitt and Venkatesh (2000) and Campana (2011: 222) report for the salary of members of an organized crime group in Chicago and a Mafia group in Naples respectively.

During the time of the negotiation, the ships also needed to be supplied with food and marine diesel once the ships' stores ran out. Particularly for ships owned by major Western business interests, ransom negotiations tended to focus on ensuring the well-being of the crew. Food and *khat* (for the guards) were supplied to the hijacked ships with a huge mark-up – reflecting the protector's ability to tax the supplier, with UN (2011) indicating mark-ups of 300% over local prices. The New York Times (5/X/2011) reports that the pirates who kidnapped the Chandler couple off their yacht and held them

inland spent around \$20,000 a month on drugs, food and protection during the extended ransom negotiation.

After the conclusion of ransom negotiations, there was further redistribution. Hansen (2009: 25-26) cites a pirate saying that the local clan expects payment in exchange for protection. Although our interviewees were always reluctant to discuss figures, a “community development fee” of 20% of the final ransom is sometimes mentioned for Al Shabaab (Somalia Report 2/IV/2012). This was highly sensitive since “anyone involved in the provision of a ransom payment must satisfy themselves that there is no reasonable cause to suspect that the money ... will or may be used for the purposes of terrorism” (HM Treasury and the Home Office 2009, Annex A: 13-14). However, Al Shabaab was paid for tolerating the local clan’s protection of piracy in Xaradhere. Figure 2 shows the Bloomberg AIS map of the *MV Albedo* from its capture in November 2010 to May 2012. The ship spent its entire sojourn in the direct vicinity of Xaradhere: all AIS observations are from this location, even though Al Shabaab took full control of the city during this period. Local sources indicate that an Al-Shabaab representative took a cut of each ransom payment (Interviews I-5 and I-6). Suna Times (05/05/2011) specifically mentions a “head of relationship with pirates” in the Al Shabab leadership, while Al Shabaab leader Ahmed Godane referred to pirates as the “mujahedin of the sea” who were “at war with non-Muslims” (Interview I-7).

Figure 2. Bloomberg map for *MV Albedo* at Xaradhere

There also appear to be significant payments to regional authorities. UN (2010) documented extensive links between the Puntland government and various pirate groups with one pirate leader claiming that 30% of the final ransom were paid to the Puntland government. In exchange the government tolerated piracy, guaranteed the free movement of known pirates in the main cities and ministers intervened on behalf of pirates to ensure their release from local and foreign jails. Even diplomatic passports were available to well-connected pirates (Reuters 18/VII/2012). We therefore have compelling evidence

that those who control coastal territory in Somalia extracted substantial financial gains from protecting pirates.

There is also interview evidence that pirates helped their “protectors” in turn. Despite the civil war, Somalia remained an active participant in maritime trade across the Indian Ocean. Traders pay “taxes” to safely reach their destination through coastal waters infested with opportunistic maritime criminals and for loading and unloading goods. Ships that refuse to pay – such as the ships chartered by the World Food Programme – are boarded and sometimes hijacked. One local interviewee suggested that pirates are encouraged to target “unprotected” merchant ships, with traders who have bought protection passing on information about traders *without* protection to pirates (Interview I-8). Pirates thereby eliminate competition on behalf of the protector and raise the value of the protection contract to those who are protected.

There are several examples of business-people who built up private militias on the basis of hugely profitable contracts (particularly in the distribution of humanitarian aid and in providing services to foreign NGOs) to become warlords and move into the business of private protection themselves (Hansen 2003 and Hansen *et al* 2012). Does this apply to the piracy business? Building the military capacity to protect one’s own business interests is expensive and highly risky as existing providers fight any newcomers. Reports of the pirate group commanded by Isse Yulux illustrate the difficulties of trying to provide security “in house” (Somalia Report 7-14/VIII/2012). Yulux invested heavily in his own militia to provide protection for his piracy business in Northern Puntland, taking advantage of the geography of the remote Ras Hafun peninsula and exploiting locals’ disappointment over a lack of government funding for development (see figure 1).

However, in June 2012 Yulux’ land support was suddenly cut off by an incursion of the Puntland Maritime Police Force (PMPF) and he had no choice but to buy protection. The route of the *MV Smyrni* (hijacked by Yulux’ crews in May 2012) in search of a safe anchorage can be seen in Figure 3, where

each dot is based on the AIS signal from a specific date. Unable to operate from his usual anchorage at Ras Hafun, Isse Yulux initially took the *MV Smyrni* to Bargaal where he briefly bought protection from his former business partner Gacan Bawaaqo (Somalia Report 3/VI/2012). Eventually the *MV Smyrni* was moored at Dhurbo (between Boossasso/Bender Cassim and Calluula) where Yulux obtained protection by paying off some commanders of the Puntland Maritime Police Force (Somalia Report 31/X/2012). As all subsequent AIS signals were emitted from the direct vicinity of this location, we can assume that the *Smyrni* was “safe” at Dhurbo.

Figure 3: Map of the route of *MV Smyrni*

Even the large pirate militia of Mohamed Garfanji at Hobyo, built up with the proceeds from a string of profitable hijackings, did not exempt its commander to stop making protection payments. Garfanji was reported to maintain “a small infantry division of several hundred men, 80 heavy machine guns and a fleet (a half dozen) of large trucks with anti-aircraft guns” (New York Times 5/X/2011). Despite this considerable in-house military power, Garfanji co-operated closely with local clan elders. At one stage he agreed that his militia would act as a reserve clan militia to stop the advance of Islamist forces into the Hobyo region (New York Times 1/IX/ 2010). However, rather than fighting, Garfanji eventually negotiated a deal under which he paid Al-Shabaab a “non-interference fee” of US\$ 200,000 for each successfully ransomed ship (Interview I-3). This indicates the continued pre-eminence of established providers of governance (in this case clan elders and Islamists) in protecting piracy.

There is no evidence for protectors moving into the criminal market either: protectors can extract significant revenue from protecting the criminal activity and their comparative advantage is in protection rather than in crime. Anderson (2009: 4) argues that while there may be “connections between pirate gangs and the political overlords who control the Somali regions, ... piracy is not promoted or directed by such people.” Similarly, Do (2013) found no evidence of a direct involvement of clerics and clan elders in running piracy enterprises.<sup>8</sup> The clear distinction between protectors and

criminals observed in other types of organized crime holds in Puntland and Central Somalia. Thus we conclude that the answer to question 1) is positive.

#### ***4. Do co-ordination mechanisms among protectors exist?***

Piracy requires a significant amount of inter-clan cooperation. Hijacked ships were ransomed from a limited number safe anchorages off the Somali coast (Shortland and Varese 2014). In general, pirates turned to their own clan group for safety.<sup>9</sup> Pirate groups obtained protection from specific sub-clan groups at particular anchorages (Ould-Abdallah 2008). However, pirates needed protection in a much larger geographical area than any single clan projects power. Pirate crews launched their skiffs as close as possible to the target area, i.e. from Northern Puntland for Gulf of Aden (GoA) raids and from Kismayo for raids in the Southern Indian Ocean (Suna Times 05/III/2012). Final preparations on the beach took time and pirates often only took (highly valuable) weapons and motors to the launch area and obtained skiffs locally (Interview I-9). Unsuccessful crews in the Gulf of Aden could resupply in the Northern pirate areas. All these activities took place outside the pirate crews' heartland and needed protection. Once a pirate group had hijacked a ship, the stakes rose even further: nearly every ship was a multi-million dollar asset and hence an attractive potential target for any rival criminal gang or militia in need of funds.

Maps generated from the AIS signals emitted by captured ships provide primary evidence of cross-clan co-operation. The *Albedo's* experience shown in figure 2 above turns out to be an unusual trajectory. Most ships made a long voyage to the destination anchorage and back to their original course within territorial waters. This lowered the risk of naval intervention, but involved passing territory associated with other, potentially rival, clans. Figure 4 shows the route of the *Talca*, which disembarked the attack crew near Bargaal in Northern Puntland and took on cheaper guard crews instead (Interview I-2).



After ransoming pirates disembarked and ships became even more vulnerable. Low on diesel, soiled from their long mooring period and manned by traumatised crew, most ships made a slow exit along the coast similar to the *Talca* in Figure 4 to minimise navigational risks and travel time. Yet, the World Bank / UNODC database of successful Somali pirate attacks (Do 2013) has no multiple entries, indicating that pirates never ransomed the same ship twice.<sup>10</sup> Dua (2013) provides interview evidence that pirates organised protection for ransomed ships, socially legitimising their business by placing it in the cultural context of *abhan* (protection) rather than “sea robbery”: “... we are just asking them to pay us a tax and once they pay a ransom we make sure the ship is not hijacked again” (Dua 2013: 361). This even worked for extreme cases like the *Stolt Strength* released on 21/04/2009 which ran out of fuel and helplessly drifted 200nm off Somalia for 4 days until fuel and an escort arrived (Family Security Matters 2009).<sup>11</sup> Crucially for our argument, the IMB only reports one attempt to re-hijack a ship shortly after ransoming, which is discussed in detail below.<sup>12</sup>

Figure 4. Bloomberg map for *Talca*

Further, during ransom negotiations some ships made short outings into the open sea (generally as a “mothership” and occasionally as an attack craft; see UN 2011), again passing different clan territories. Figure 5 shows that the Greek-owned chemical tanker *Liquid Velvet* once left its Garacad anchorage to move several hundred miles into the ocean before returning to Garacad and on a different date made a voyage to Ras Hafun, an anchorage associated with a *different* sub-clan group.

Figure 5. Bloomberg map for *Liquid Velvet*

A significant minority of ships spent time in several anchorages: i.e. we observe several AIS signals from the same location before the ship moves on to the next anchorage. An example is the *Hoang Soan Sun* which made several journeys between anchorages controlled by different clans: spending extended periods Xaradhere and Garacad, as well as visiting Bandar Beyla and Eyl (Figure 6).

Figure 6. Bloomberg map for *Hong Soan Sun*

The case of the MV Suez and the MV Yuan Xiang illustrates another aspect of long-range co-operation. Given the distances involved in delivering ransoms in central Somalia, the light aircraft used in the ransom air-drops usually took off from regional airports. However, the planes carrying the MV Suez / Yuan Xiang ransom money were impounded, six men were arrested and the ransom was confiscated at Mogadishu airport on 24 May 2011 (Somalia Report 24/V/2011). Both planes had used the airport on “unspecified missions” on several occasions before. The issue was swiftly resolved, however: the pilots were released and their company continued to deliver ransoms to Somalia (The Star 22/III/2012). The MV Yuan Xiang was released on 8 June 2011 and the MV Suez on 12 June 2011 (Somalia Report 12/VI/2011, Somalia Report 08/VI/2011). The only indication that somebody may have lost out in the process are two unsuccessful attempts to re-hijack the almost unnavigable MV Suez on 15 and 17 June 2011 (Somalia Report 15/VI/2011, Tribune 17/VI/2011).<sup>13</sup> With 179 Somali hijackings mostly resolved through ransoming (Do 2013), the re-hijacking attempt of a single vessel with a particularly problematic ransom drop is the exception that proves the rule.

The patterns of free movement of pirates, hijacked ships and money indicate that protection agreements cover large stretches of the coast and inland infrastructure. This means that there must be co-operation between the providers of pirate security.<sup>14</sup> Generally militias are mobilised locally and organised at the sub-clan level to defend territory (e.g. pasture-land) and enforce inter-clan agreements (Le Sage 2005, Do 2013). Therefore no single militia controls sufficient territory to guarantee the safety of the observed excursions and voyages to and from the safe anchorages. Similarly, transporting outboard motors, weapons and telecommunications / GPS equipment from Northern and central Somalia past innumerable road-blocks to beaches near Kismayo, preparing an operation with locally bought or hired skiffs and the resupply of unsuccessful crews needed effective protection. A mutual non-aggression

pact between pirate groups would not protect them against attacks from opportunistic fishermen who could easily have targeted a ship in territorial waters.

In Somalia, clan elders have well established networks for resolving intra- and inter-clan conflicts and are able to obtain and enforce the geographically comprehensive security guarantees necessary for pirates. In the absence of an effective national state, rural Somalia has largely reverted to Somali Customary law (*Xeer*) and *Sharia* as the basis for structuring social interactions (Osman 2010). *Xeer* is interpreted by councils of clan elders and enforced through clan militias and clan-based mutual insurance groups (*diya*). Even where regional authorities have successfully taken over responsibility for policy decisions, taxation and law enforcement, clan elders and religious leaders play a key role in the mediation of intra and inter-clan conflicts (Do 2013). Channels of communication and safe spaces exist for elders from different clans to discuss business and resolve disputes. As soon as an incident violating a clan's interest has occurred, the concerned clan will send a delegation of intermediaries to begin arbitration and prevent the conflict from spreading. "...[E]ntering into negotiations with 'peace emissaries' in good faith" is one of the most fundamental and immutable aspects of Somali Customary law (Le Sage 2005: 32).

Anecdotal evidence shows that clan mediators were indeed called upon to settle incidents of pirate-on-pirate violence (All Africa 16/VIII/2011; Somalia Report 7-14/VIII/2012; Somalia Report 30/X/2011; Somalia Report 29/XI/2011). Reported disagreements between pirates were generally within-crew (usually relating to the distribution of ransoms) and were carried out on land. The quick intervention of elders in these disputes serves as an indication that the protectors also play an important "corporate governance" role helping pirates to enforce internal contracts. There is no evidence that pirate groups contested each other's anchorages. Territorial control was only contested between alternative protectors, such as the take-over of power in Xaradhere from local clan militias by Al Shabaab's Islamist militias in 2010 (Do 2013).

Clan mediators also stepped in when pirates breached agreements on what were “legitimate” targets. Local trading vessels which were hijacked despite having bought protection tended to be released either without or for relatively small ransoms (for examples, see Ecoterra International 09/I/2012 and Somalia Report 12/IV/2012). If pirate groups persisted in hassling or hijacking protected ships, the punishment was meted out by the protector. When pirates took ships destined for ports controlled by Islamists in South-Central Somalia (The National 31/III/2010), their militias invaded pirate settlements such as the anchorages of Hobyo and Xaradhere (BBC News 16/VIII/2006; ABC News 28IV/2010). On the other hand, pirates were given information on *dhow*s that had not paid protection money and were encouraged to hijack them (Interview I-8).

In the case of the British couple Paul and Rachel Chandler kidnapped off the Seychelles in 2009, the local clan mediators stepped in to end a hostage situation which had become a liability for the local community. Initially, the pirates enjoyed good relations with the villagers, while raking up large debts for food and protection. However, when public opinion turned decisively against the group, clan elders exerted pressure on the pirates to give up the Chandlers for a lower than expected ransom (New York Times 5/X/2011).

Overall, perhaps the best indication of the effectiveness of the protection agreements is how smoothly piracy worked, despite the ever-changing power relations and a huge arsenal of weaponry in the country. In the overwhelming majority of cases the possession of ships or hostages were not contested in the anchorages, nor were the ships hassled on outings or re-hijacked after release and usually everyone got their share of the ransom. We therefore conclude that effective coordination exists among protectors.

## **5. Conclusions**

We have outlined a general framework of legal and extra-legal governance that puts gangs, Mafias, insurgencies and states on the same continuum. We have drawn a theoretical distinction between piracy

and banditry on the one hand, and the protection of such crimes. Key tenants of this framework posit that “producers” of crime are clearly distinct from specialists in protection; that the “producers” pay a fee to the protectors who supply a genuine service; that protectors ensure limited market competition with violence targeted at their clients’ competitors and that coordination mechanisms among protectors to discuss matters of common interest, to enforce rules and to coordinate activities are in place. The empirical aim of the paper was to explore whether the case of Somalia could be interpreted through this framework. We focused on two questions: 1) Do the “producers” of crime (piracy) purchase security from specialists in protection? 2) Are there inter-regional co-ordination mechanisms among the protectors of piracy to discuss matters of common interest, to enforce rules and to coordinate activities? We conclude that pirates are clearly distinct from specialists in protection and that they pay a fee to them. Those who provide order in this business are primarily clan elders and their militias, as well as Al Shabaab militias. Protection services have brought order to this criminal market and enabled piracy to flourish. The protectors ensured that re-hijacking of vessels did not take place and that pirates could operate along the entire Somali coastline. In return the protectors reaped significant profits for themselves. We found no evidence that a pirate group managed to supplant the established protectors and provided their own security, though some have tried. Secondly, long-range coordination mechanisms are in place and pirates trusted in their effectiveness.

These findings have broad-ranging implications for state-building and organized crime. First, future scholarship should distinguish among different forms of organized crime. Weak states might have within their territories a flourishing ‘parallel economy’, namely activities conducted outside the control of the state to avoid taxes, duties or other levies, often with the complicity of state officials (Wennmann 2005: 482; Reno 1998: 21-23; Andreas 2004). For instance, “organized crime” was particularly active in post-conflict Kosovo and Bosnia, smuggling oil, fuel, arms, cars, cigarettes and human beings, as well as being involved in counterfeiting, property seizure and prostitution (Yannis 2003; Donais 2003; Schroeder and Friesendorf 2009). In this case, “organized crime” was producing some (fake) goods

and trading commodities (including people) across borders, rather than governing a given territory. A sensible policy approach would be to integrate producers and traders in the legal economy as much as possible, for instance by reducing opportunities to arbitrage between different tax regimes (Wennmann 2005). Robust anti-corruption policy, demand reduction programmes, lifting of trade bans and legalization of some commodities could also help to increase state capacity and reduce organized crime. On the other hand, heavy-handed criminalization of all activities in the informal sector would be counterproductive (Wennmann 2005).

Somalia does not only have a flourishing parallel economy, but also entrenched providers of protection that operate independently of the state. Thus, integrating the parallel economy into the legal economy (Wennmann 2005) will yield limited success. For instance the policy of co-opting pirates as coastguards had unintended consequences. While pirates were more than happy to be paid and trained as coast-guards, they reverted to piracy as soon as the returns to piracy outweighed the gains from coast-guarding.<sup>15</sup> *Ex-ante* it is next to impossible to verify whether a crew sets sail to conduct coast-guarding, piracy or fishing, making it extremely difficult to contract with pirate groups (Bueger 2012). Without tackling the protective dimension of piracy, providing alternative employment will not work.

Blanket repression has also been attempted in Somalia. This has taken the form of bombing pirates' hideouts (Somalia Report 15/V/2012) and sea-based counter-piracy measures. Bombs have proved to be ineffective: pirates easily avoided them by hiding inside hijacked ships. Military counter-piracy measures have been effective (the total attacks went from 35 in 2012 to 2 in 2014<sup>16</sup>), yet this solution is very expensive. The overall cost of maintaining a naval presence in Gulf of Aden and the Indian Ocean is between \$250m and \$400m per year. Ship-owners pay in the region \$5.000 a day for a team of four armed guards. For a standard 40-day long voyage, the bill goes up to \$200,000 (Somalia Report 26/V/2012; I-10). The moment the internal community and ship-owners lower their guards, piracy will return. A former pirate recently said: "We are still eyeing the waters. Chances will come. I'm very

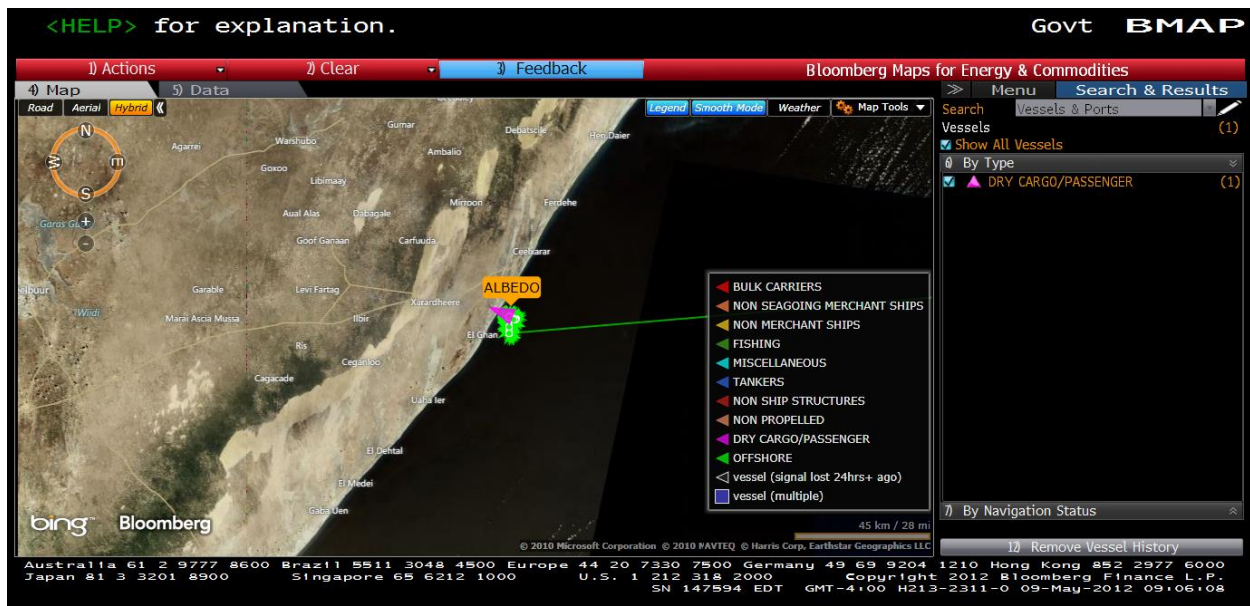
much in no doubt those good days will come back” (*Christian Science Monitor* 13/VII/2014). Most crucially, this approach fails to understand that piracy is protected on-shore.

Both repression and co-optation of pirates fail to acknowledge the complex nature of the phenomenon. In Somalia, as in several other post-conflict countries, powerful (and mostly legitimate) forms of governance, often labelled as ‘organized crime,’ exist. The international community could engage positively with some enablers of the crime (i.e. piracy), including village elders, clan leaders and local politicians, at a sub-state level. This approach is consistent with the views advanced by critics of state-centred approaches to state-building (Murphy and Saba 2011 and Bruton 2010).<sup>17</sup> In Somalia those who enable piracy already provide effective governance to local communities and enjoy a degree of legitimacy, thus they cannot (and should not) be replaced, criminalized or bombed. A way forward is to devise economic incentives to make the protectors stop enabling piracy. Many coastal communities have denied pirates safe havens and some have even pushed previously well entrenched pirates out of local anchorages (Shortland and Varese 2014). But if the protectors gain more from protecting high-seas crime than legitimate trade, the pirates soon return.



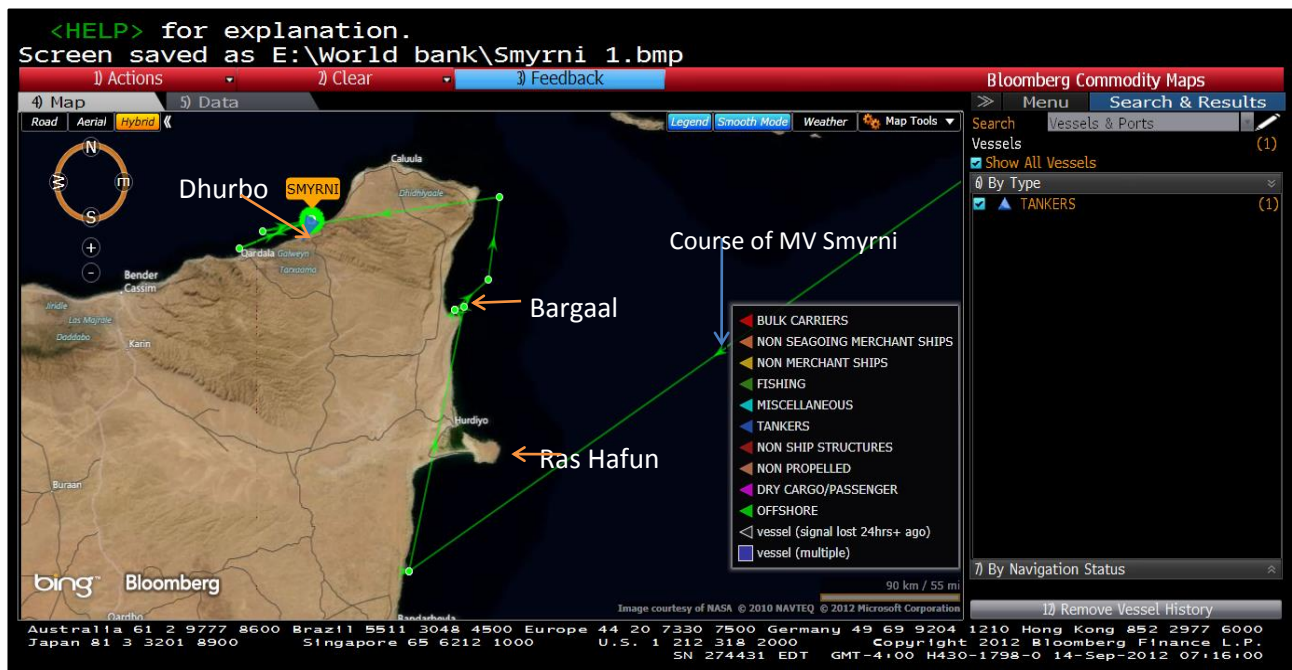


Figure 2: Albedo at Xaradhere



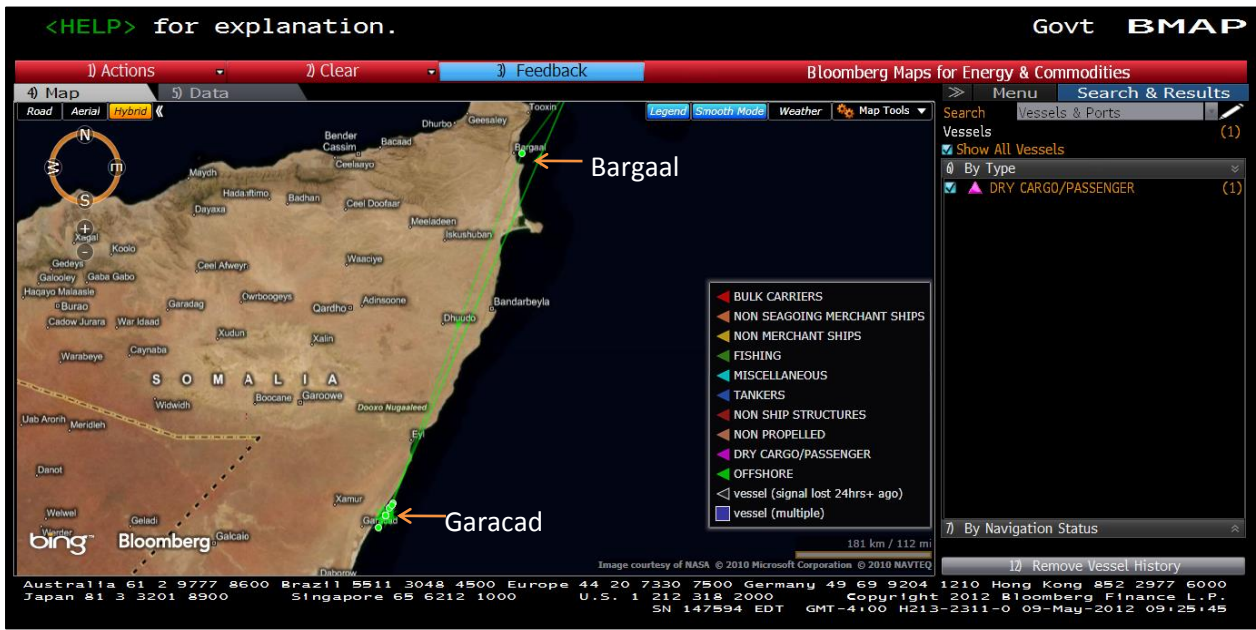
Source: Bloomberg Finance L.P.

Figure 3: MV Smyrni in search of safe anchorage



Source: Bloomberg Finance L.P.

Figure 4 Bloomberg map for Talca (mostly Garacad)



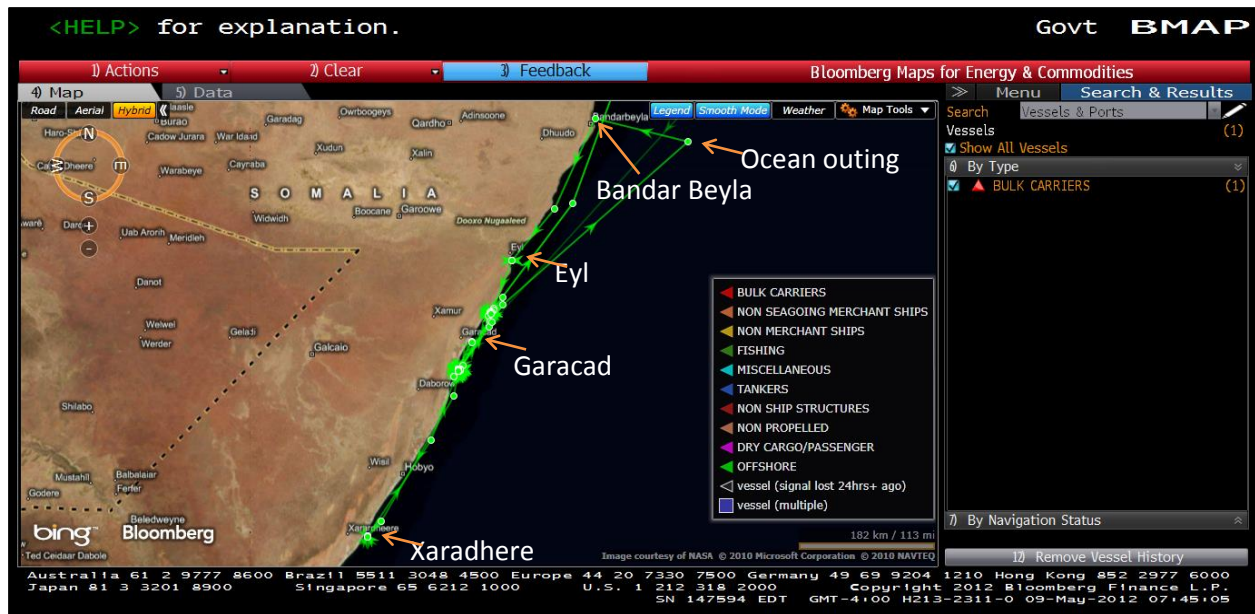
Source: Bloomberg Finance L.P.

Figure 5: Bloomberg map for Liquid Velvet (mostly Garacad)



Source: Bloomberg Finance L.P.

Figure 6: Bloomberg map for Hong Soan Sun (Garacad, Eyl and Xaradhere)



Source: Bloomberg Finance L.P.

## Interviews

- I-1. Ransom Negotiator, March 2012\*\*
- I-2 Ransom Negotiator, March 2012\*\*
- I-3 Puntland Darod Majerteen analyst, February 2011\*
- I-4. Hawiye Habr Gedir Suleiman analyst, May 2012 \*
- I-5. Hawiye Habar Gidir Cayr NGO director, May 2012 \*
- I-6. Hawiye Habar Gidir Saleeban NGO director, February 2012 \*
- I-7. Hawiye Habar Gidir Cayr analyst, May 2012 \*
- I-8. Hawiye Habar Gidir Saleeban pirate financier, May 2012\*
- I-9. Naval Intelligence Officer, May 2012\*\*
- I-10. Former CEO, Clipper Shipping Group. October 2014 \*\*\*

\* Interviews conducted by Farley Mesko on behalf of Do (2013).

\*\* Interviews conducted by Anja Shortland.

\*\*\* Interview conducted by Federico Varese.



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## ENDNOTES:

<sup>1</sup> Anja Shortland was a member of the World Bank (Do, 2013) project team.

<sup>2</sup> As reporting attacks to the IMB is voluntary the list of attempted hijacks may not be fully comprehensive, but it would have been difficult to hide an actual hijack from the intense media focus on Somali piracy from 2008-2014.

<sup>3</sup> Warlords whose power is not anchored in the traditional clan structure are vulnerable to shifts in their fortunes and are easily challenged by their own militias (Hansen 2003).

<sup>4</sup> See Somalia Report (29/VIII/2011) on the use of “checkpoints” to raise revenue from local traders and food aid transports.

<sup>5</sup> UN (2010) Three providers of trucking services in Somalia won 80% of the US\$200mn WFP contract for food aid delivery in 2009.

<sup>6</sup> The anchorage fee reported for pirates is very similar to the anchorage fees charged by Al Shabab to traders unloading cargo in Southern Somalia, see UN (2012).

<sup>7</sup> The ransom agreed in March 2012 for the MV Albedo was based on pirate “costs” of US\$50 per day for 100 guards (Horn of Africa News 29/III/2012).

<sup>8</sup> However, pirate bosses tend to be closely related to local officials and clan elders indicating that to obtain “protection” one needs good social connections as well as money. Interviews I-7 and I-8

<sup>9</sup> There are several examples of mixed clan pirate groups which might broaden the crew’s options of safe havens– see for example Hansen (2009). Such groups can form through inter-marriage: e.g. the pirate boss Mohamed Garad had a Darod-Majerteen father and a Hawiye – Habr Gedir – Suleiman mother.

<sup>10</sup> The two tankers on charter to Stolt hijacked in September 2008 (the Stolt Valor) and in November 2008 (the Stolt Strength) had different owners and flag states. Two different ships called Bunga Melati (2 and 5) were hijacked within 10 days of each other in October 2008.

<sup>11</sup> However, this “protection” only applied in the period immediately after ransoming. The IMB Annual Piracy Reports show that the Stolt Strength and Bunga Melati 2 were unsuccessfully attacked 40 days and 5 months after their release respectively. There were further attacks on the interests of ship-owners which had paid a ransom (e.g. Clipper and Samho). However, given that attacks were launched at night and from a distance of at least 2nm, pirates would not necessarily have been aware of who they attacked.

<sup>12</sup> The MV Suez was targeted 3 days after her release.

<sup>13</sup> The ship had developed engine trouble and was eventually scuttled.

<sup>14</sup> The multiple targeting of Maersk ships suggests that pirates also co-operated. The unsuccessful hijacking of the Maersk Alabama (of “Captain Phillips” fame) on 08/IV/2009 was followed by a series of attacks against Maersk ships: the Maersk Alabama was attacked again on 18/XI/2009, 29/IX/2010, 08/III/2011 and 13/V/2011, as were the Maersk Karachi, Nele Maersk, Maersk Warsaw, Maersk Neustadt, Maersk Phoenix (twice), Maersk Pelican and Maersk Glory. This is probably more than a single pirate group could have managed.

<sup>15</sup> See for example the training of the Somali coast-guard by the private security firm Hart discussed in UN (2003).

<sup>16</sup> <http://eunavfor.eu/key-facts-and-figures/> accessed April 2015

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<sup>17</sup> The Puntland Police (PMPF) illustrates the problems of financing unaccountable regional governments to take over counter-piracy policies. The PMPF's highly publicised incursions into pirate anchorages in May and June 2012 were a last-ditch attempt to renew UAE funding for an "elite force, over 1,000 strong," which was increasingly perceived as a "private army" largely fighting the Puntland president's battles inland rather than addressing piracy in the coastal regions (UN 2012: 22). Similarly, UN officials were concerned that the prisons built using UNODC funding largely contained very junior pirates while their bosses (with the exception of Abshir Boyah) remained free (UN 2012), while UN (2011) reported on the release of 60 convicted pirates after bribes were paid to court and prison officials.